

Urmila Devi Vs. Devinder Kumar Parcha

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Court : Delhi

Decided On : Dec-08-1982

Reported in : 1983(5)DRJ291

Judge : Leila Seth, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 13(1)

Appeal No. : First Appeal No. 193 of 1982

Appellant : Urmila Devi

Respondent : Devinder Kumar Parcha

Advocate for Def. : Mr. Jagat Singh

Advocate for Pet/Ap. : R.D. Upadhyay,; Jagat Singh and; J.K. Sharma, Advs

Judgement :

Leila Seth, J.

(1) This is a wife's appeal against the judgment and order, dated 7th July, 1982, passed by Mr. M.A. Khan, Additional District Judge, Delhi in H.M.A. Case No. 113 of 1981, dissolving the marriage of the parties under Section 13(1)(ia) of the [Hindu Marriage Act, 1955](#) (to be referred to in short as 'the Act').

(2) These are the facts Ms. Urmila Devi. the appellant and Mr. Devinder Kumar, the respondent were married on 3rd May, 1977 at Delhi. The marriage was solemnized in accordance with the Hindu religious rites. After marriage, the parties resided at Shahdara.

(3) On 23rd March, 1978, Urmila Devi developed some abdominal pain and Devinder Kumar took her to Safdarjung Hospital. It appears, that she was pregnant and miscarried or aborted there on the same day. On 24th March, 1978, she was discharged from the hospital.

(4) According to Devinder Kumar, he wanted to bring her home from the hospital, but she insisted on going to her father's house at Moti Bagh. In the circumstances, he left her there He informed her parents that he would return within a few days and take her back. But they exclaimed that they would not send her back to such a mean family and he should not come to their house.

(5) However, on 26th March, 1978, accompanied by his brother-in-law (sister's husband). Ram Lal, he went to fetch Urmila Devi from her parents' house. Both of them were insulted and she did not return.

(6) His parents and neighbours also approached Urmila Devi and her father to send her back but her father stated that he would not sent her at any cost. He, also, wrote a letter but to no avail.

(7) In fact, in her letters she specifically stated that she would not live with him. She used foul and abusive language in these letters She had misbehaved with his-family and had been quarrelling with him from the inception of the marriage and was insisting on living separately from his parents. She also d the abortion against his wishes.

(8) However, Urmila Devi's version is, that she neither misbehaved with Devinder Kumar nor any other member of his family nor did she request him to live separately from his parents. According to her, Devinder Kumar's mother and sister did not like her as she had not brought adequate dowry. She asserts that these ladies treated her with love and affection in the presence of Devinder Kumar but ill-

treated her as soon as he left for office.

(9) On 23rd March, 1978, she had to be admitted in Safdarjung Hospital at about 4 p.m., as she was indisposed as a result of a beating by her mother-in-law. A minor operation was performed and the foetus aborted. Thereafter, she was discharged next day. She was, then, deposited in the house of her parents. Despite promises, Devinder Kumar did not come to fetch her either on 26th March, 1978 or on any other date, though she was ready and willing to go and live with him. As such, she went to his house but her mother-in-law would not let her in. She waited till evening, when Devinder Kumar returned, but he also asked her to leave.

(10) On 7th April, 1981, Devinder Kumar filed the petition for divorce. He prayed for the dissolution of the marriage both on the ground of cruelty as also desertion.

(11) After considering the evidence, the trial court, came to the conclusion that no animus deserendi on the part of Urmila Devi had been proved. In the circumstances, it held that desertion had not been established. However, the court was of the opinion that the ground of cruelty had been established. In the result, as already noticed above, a decree of divorce had been granted.

(12) In coming to this conclusion, the trial court mainly relied on three letters admittedly written by Urmila Devi to Devinder Kumar. These are Exhibits P1 to P3. The court opined that the letters were abusive in nature, written in filthy language and clearly indicated that Urmila Devi had refused to return ; this amounted to treating Devinder Kumar with cruelty as it caused him mental anguish.

(13) Mr. R.D. Upadhyay, learned counsel appearing for the appellant, contends that the trial court has erred in reading certain portions of the letters out of context and as a result incorrectly concluded that cruelty has been established.

(14) It is, therefore, necessary to examine the purport of these letters, as also the other allegations of cruelty.

(15) The first allegation with regard to cruelty, is, that right from the start Urmila Devi insisted on living separately from Devinder Kumar's parents. Though, this assertion has been made by Devinder Kumar in his deposition, no other witness

has corroborated this statement. The next allegation is that Urmila Devi had an abortion against his wishes. This, too, is supported only by his sole statement. Urmila Devi has denied both the above assertions in her evidence on 7th April, 1982 in court. So, there is statement against statement. But in her deposition before the Metropolitan Magistrate, Ext. P4 dated 17th October, 1981, she has admitted that she requested Devinder Kumar to live separately.

(16) With regard to the question of abortion, no medical evidence has been produced by either side to corroborate their version. But, as the onus was on Devinder Kumar to establish the allegation, and he has not been able to do so, it is not possible to hold that Urmila Devi voluntarily aborted the foetus against his wishes.

(17) I turn, next, to the letters Exts. P1 to P3 as also the statement of Urmila Devi, Ext. P4. This is a certified copy of her deposition dated 17th October, 1981 in the court of Mr. S.L. Chopra, Metropolitan Magistrate, Delhi in the maintenance proceedings under Section 125 of the Code of Criminal Procedure.

(18) EX. P1 is a letter (undated) written by Urmila Devi to Devinder Kumar. The purport of the letter, apart from asking Devinder Kumar to return a box belonging to Manju, is to the effect, that she does not intend to return to Shahdara even 'if she is approached by the President of India instead of Bimla Passi. She asserts that Devinder Kumar has no intelligence and she has no intention of living with him unless he mends his ways.

(19) The next letter Ext. P2 is a slightly longer one. It is also undated. In it she refers to their past relationship and her humiliation. She asks him to sort out things for himself and adopt the course of action he considers best. She specially asks him, if he has seen his face in the mirror, and, if he has, then, he would see that his appearance has been totally spoilt ('Tumhari Shakal Par Barah Baze Hua Hai'). She pities him and requests him to behave in a sensible manner. However, she does not want to be disturbed nor does she want an altercation. She berates him for not taking care of her during her illness.

(20) She goes on to state that she never thought that he would be so mean and selfish. She asserts that despite his innocent appearance he is very shrewd and should put his brains in order. She further, asserts, that though he has accused her of undergoing an abortion, in fact, he must have had many abortions done before marriage and that is why such thoughts have crept in. She states that she hates him and calls him a dirty person with a cheap mentality and an incarnation of Ravana.'

(21) The next letter, Ext. P3, is also undated. In this Urmila Devi complains about Devinder Kumar's parents instigating him against her and ruining her life. She scolds him for being influenced by evil spirits and denying that she is his wife. She complains that his mother came and accused her in the presence of her brother, of having the wanderlust. She categorically states that she does not want to step into a house where a daughter-in-law is not honoured ; especially as she is quite satisfied with her present style of living with her parents; she gets food without working and enjoys sound sleep ; no one dictates terms to her nor does she suffer any discomfort.

(22) She goes on to add that if he does not behave properly she will come to the station, where he works, and insult him roundly in the presence of his superiors, in an unforgettable manner. She refers to him as a person who prefers violent conduct and does not appreciate gentleness. She tells him that he will only learn how to move about in society when he has been kicked and knocked about.

(23) The next document is Ext. .P4. It is her deposition before the Metropolitan Magistrate in the maintenance proceedings. She states there that Devinder Kumar was a reservation clerk in the Railways earning a salary of Rs.750.00 per month, She accuses him of having illicit relationship with a girl called Kamla. She admits having written a letter to Kamla, in which she agreed to give him divorce provided she was paid Rs. 80,000.00 . She also admits that she requested Devinder Kumar to separate from his family, as there was no peace in the family home.

(24) In view of this earlier statement of Urmila Devi, which corroborates the statement of Devinder Kumar in court, it is clear, that Urmila Devi had requested Devinder Kumar to live separately from his parents. But for a wife to ask her

husband to live separately from his parents, because there is some hassle between her and her mother-in-law, would not per se amount to cruelty.

(25) However, (from the evidence of Ram Kumar, Public Witness . 4, a colleague of Devinder Kumar,' it is apparent that Urmila Devi used to go to Devinder Kumar's office and talk to the female staff as also some other railway employees. As such, the threat held out to him in her letter Ext. P-3, that she would insult him in his office and in front of his superiors in such a manner that he would not forget it for the rest of his life, does not appear to be just a futile comment. Further, the intemperate language used by her in her letters is not what is normally expected between a wife and husband. Referring to a husband as the incarnation of Ravana'. calling him a person of mean mentality and cheap character, making unsubstantiated allegations regarding illicit relationship, is certainly grievous and abusive conduct. It cannot be taken as the normal wear and tear of marriage. The cumulative effect of the circumstances would indicate an absolute destruction of confidence between the parties. The cruel conduct consists of' the complaints, accusations, insults, abuses, taunts and intemperate language as reflected in these letters and Ext. P-4. One cannot expect a spouse to reasonably endure this treatment.

(26) It would, therefore, appear to me that the finding of the trial court was justified, on a reading of the letters as a whole, cumulatively.

(27) In view of my opinion that in the facts and circumstances of the case, the finding of the trial court with regard to cruelty must be confirmed]it is not necessary for me to consider the contention of Mr Jagat Singh, learned counsel for the respondent. This contention is to the effect, that should I conclude that cruelty is not established, then, the respondent is in any case, on the facts, entitled to a decree of divorce on the ground of desertion, despite his not filing a cross-objection in this Court. Mr. R.D. Upadhyay vehemently contests this proposition. As already noticed, I do not intend to dilate on this aspect of the matter, as the respondent is entitled to a decree of dissolution on the ground of cruelty.

(28) In the result and for the reasons outlined above, the appeal is dismissed and the decree of divorce granted under Sectio. 13(1)(ia) of the Act is confirmed.

However, in the facts and circumstances of the case, I make no orders as to costs.

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